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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re H.I., a Person Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent.

v.

I.I.,

Defendant and Appellant.

B269644

(Los Angeles County
Super. Ct. No. DK13813)

APPEAL from orders of the Superior Court of Los Angeles County. Teresa Sullivan, Judge. Affirmed.

Deborah Dentler, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Brian Mahler, Associate County Counsel for Plaintiff and Respondent.

Appellant I.I. (mother) appeals from the juvenile court's findings and orders establishing dependency jurisdiction over her daughter H.I. (born July 2015) and removing her from mother's custody. Mother contends there was insufficient evidence to support the juvenile court's findings under Welfare and Institutions Code section 300, subdivision (b),¹ that her substance abuse placed H.I. at substantial risk of serious physical harm. Mother also challenges the dispositional order removing H.I. from her custody. She contends the juvenile court erred in finding that reasonable efforts were made to prevent H.I.'s removal from her custody.

Substantial evidence supports the juvenile court's findings. We therefore affirm the jurisdictional and dispositional orders.

BACKGROUND

Detention and section 300 petition

On October 10, 2015, the Los Angeles Department of Children and Family Services (the Department) received a referral reporting that mother and two-month-old H.I. had arrived at the Union Rescue Mission Shelter in Los Angeles the previous day. During the shelter's intake process, mother tested positive for cocaine. Mother was incredulous at the positive drug test and demanded a retest. The second test was also positive for cocaine. The shelter staff observed mother breastfeeding H.I. despite the positive cocaine test. The shelter's policy prohibited mother from remaining in the shelter after her positive drug test, or from reapplying to the shelter for the next three years.

Mother told the shelter staff that she had given birth to H.I. at a Florida hospital in July 2015, but she could not recall the name of the hospital or the names of any of the doctors. She said that H.I.'s vaccinations were not up to date.

Mother said she left Miami for Los Angeles because she was constantly harassed and propositioned by men who frequented the area where she had lived. After arriving in

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Los Angeles, mother went to the Los Angeles County Department of Public Social Services (DPSS) to apply for housing and public assistance. DPSS denied mother benefits because she was receiving assistance from Florida. The DPSS staff informed mother that terminating her benefits in Florida and receiving assistance in California would take approximately one month. In the interim, DPSS provided mother with hotel vouchers for one week of temporary housing. After the vouchers were expended, mother met a woman who lived near the DPSS office and who allowed mother and H.I. to stay in her home.

Mother also told the shelter staff that she had a 17-year-old daughter, K., and another child who was “deceased.” K. resided in Florida with her father, Charles B., with whom she had lived since her birth. Mother had no contact information for K. or Charles other than the belief that they lived in Miami.

In an October 10, 2015 interview with the Department’s social worker, mother denied using drugs or alcohol. When questioned about her positive drug test, mother theorized that the nephew of the woman with whom she had been staying may have given her a cigarette laced with cocaine without mother’s knowledge. Mother attempted to breastfeed H.I. during the interview, but the social worker cautioned mother against doing so because of her positive drug test for cocaine.

The Department took H.I. into temporary custody and arranged for monitored visits between mother and H.I. During mother’s second visit, the director of the Union Resource Mission Shelter informed mother she would be allowed to stay at the shelter, but because of her positive drug test, she could remain only as a single female and not as part of the shelter’s family program. The director advised mother that if the Department released H.I. to her, she would have to move out of the shelter and find alternate housing.

On October 15, 2015, the Department filed a petition on behalf of H.I. under section 300, subdivision (b), alleging that mother’s substance abuse and current cocaine use interfered with her ability to provide regular care and supervision of H.I., who required constant care and supervision because of her young age.

At the October 15, 2015 detention hearing, the juvenile court found a prima facie case for detaining H.I. and ordered her detained from mother. The court accorded mother monitored visits and family reunification services, including referrals for drug testing, housing, and mental health counseling and assessment.

Jurisdiction and disposition

In its November 2015 jurisdiction/disposition report, the Department reported that mother's criminal history included a 2003 misdemeanor conviction in Florida for willful obstruction of law enforcement officers and a 2009 arrest for a hit-and-run incident and for driving with a suspended license.

In an October 22, 2015 interview, mother told the social worker she had previously lived in Los Angeles between February 2014 and February 2015 and that she was unemployed and homeless throughout that period. Mother said that she did not know the identity or whereabouts of H.I.'s biological father. She said she was sexually involved with two men, Deon and Curtis, at the time she became pregnant. Mother did not know the last names of the two men, nor did she have contact information for either of them. She said she met both men in Florida and believed they both still lived there. The social worker asked mother how either of the two men could be H.I.'s biological father if mother had lived in Los Angeles between February 2014 and February 2015 and H.I. was born in July 2015. Mother appeared confused, but acknowledged that H.I.'s father could have been from Los Angeles. She then refused to discuss the matter further.

Mother again denied using drugs or alcohol and reiterated that she did not know how she tested positive for cocaine. She told the social worker that during the week she was living at a motel, she met a man who may have drugged her without her knowledge. She said she shared a cigarette with the man on October 1, 2015, and that she now believes the cigarette was laced with cocaine.

The social worker provided mother with referrals for parenting classes, individual and family counseling, child abuse therapy, substance abuse, drug testing, mental health services, and low income housing services.

On October 26, 2015, the social worker spoke with a counselor at the Los Angeles Centers for Alcohol and Drug Abuse (LACADA), where mother had enrolled two weeks earlier. At LACADA, mother was attending an outpatient substance abuse treatment program, parenting classes, drug education classes, and individual counseling sessions. She had not yet been drug tested through the program.

Mother agreed to attend an on-demand drug test on October 28, 2015, but then called to cancel the appointment, stating that she had to attend a job training session that afternoon. When the social worker called mother the following day to ask why she had not appeared for testing, mother said she was busy but would be available to test on October 30 or November 2, 2015.

Adjudication hearing

Mother testified at the contested jurisdiction hearing held on November 5, 2015. She denied using drugs and said she was “confused and shocked” when she tested positive for cocaine while at the shelter. Mother believed she unknowingly ingested cocaine when she shared a cigarette with a man after visiting the DPSS office on October 2, 2015. She said she cancelled an on demand drug test on October 28, 2015, because she learned that day that she had a training session for a new job. Mother claimed she discussed the matter with a supervising social worker, who agreed that she could be drug tested the following day. Mother said she had attended most of the classes in her drug treatment program and that she had been tested three times for drugs through the program.

Mother said she moved to Los Angeles because she was unhappy with her living arrangements in Florida and that she had no employment or government assistance there. She had no plans to return to Florida. Mother stated that her 17-year-old daughter, K., lived in Florida. When asked if she had any contact with K., mother replied that K. was “going through sibling rivalry” and “having issues with the baby.”

Mother reported she had not had a mental health assessment because she had not done the research to find a location. She expressed her willingness to have an assessment performed.

After hearing argument from the parties, the juvenile court sustained the section 300 petition. The sustained allegation provided as follows:

“The child[’s] . . . mother . . . is a current abuser of cocaine, which renders the mother incapable of providing the child with regular care and supervision. On 10/09/2015, the mother had a positive toxicology screen for cocaine. The mother used and was under the influence of illicit substances when the child was in the mother’s care and supervision. The child is of such young age requiring constant care and supervision and the mother’s substance abuse interferes with providing regular care and supervision of the child. Such substance abuse by the mother endangers the child’s physical health and safety and placed the child at risk of serious physical harm and damage.”

The juvenile court ordered the Department to provide mother with mental health assessment services and continued the disposition hearing.

Interim reports

In November 2015, the Department reported that mother had moved into a single room with a bathroom and shower but no kitchen. Mother had a bed, a dresser, clothes for herself and for H.I., and a stroller, a car seat, and a crib.

Mother’s counselor at LACADA reported that mother was in compliance with her treatment program. She tested negative for drugs on November 12, 23, 24, and 28, 2015.

Mother told the social worker that she went to Downtown Mental Health on November 16, 2015, for a mental health assessment but was told she did not need an assessment and received no referrals for further services. The social worker attempted to confirm mother’s report by telephoning Downtown Mental Health but was told that no information could be released without a signed consent from mother.

In December 2015, the Department reported that mother was having regular monitored visits with H.I. for two hours on Mondays and Thursdays. The monitor reported that during one visit, mother showed H.I. a photo of older sibling K. on mother’s cell phone. Mother then began to speak to H.I. as if she was an older child, and to K. as if she were present in the room, saying, “You can’t be mean to your sister and you can’t be jealous of her. You guys have to get along I’m both of your mother and you

have to . . . try to be nice to your sister and you don't hit your sister . . . there will be no sibling rivalry in this house You guys are sisters and blood and need to love each other. Sibling rivalry ain't pretty trust me I know.”

On December 7, 2015, mother provided the social worker with a copy of a client discharge plan from Exodus Recovery Urgent Care Center. The discharge form indicated that mother had gone to Exodus Recovery on November 30, 2015, was diagnosed with adjustment disorder, and was referred to the Los Angeles County Department of Mental Health's (DMH) downtown mental health center. The discharge note stated: “You presented here for emergency services. You were evaluated, and you are being discharged. Please follow-up with the referrals below for long-term care as soon as possible.”

Mother also provided the social worker with a copy of a mental health triage from DMH's downtown mental health center indicating that the date of the triage contact was November 12, 2015. Mother had informed the medical case worker that she was there for a court ordered mental health assessment. The case worker referred mother to an outside clinic called “Oscar Romero” for the assessment to be performed.

In a December 2015 interim review report, the Department described its efforts to have mother receive a mental health assessment. The Department noted that while mother had made attempts to submit to a mental health evaluation, she did not give the Department advance notice of her plans to be assessed, and the Department could not inform the assessor of possible concerns or provide the assessor with information that would facilitate the assessment. In addition, when mother appeared at a mental health facility to request an assessment, she told the assessor that she did not believe she had any mental health problems and that she was simply there to comply with court orders. The Department recommended that the juvenile court order an Evidence Code section 730 evaluation for mother.

At the December 18, 2015 disposition hearing, the juvenile court, after hearing argument from the parties, declared H.I. to be a dependent of the court and ordered her removed from mother's custody under section 361, subdivision (c). The court found that

the Department had made reasonable efforts to eliminate the need for removing H.I. from mother's care. The court further found that mother's decision to fly from Florida to California with a newborn, with no housing or source of support, mother's positive test for cocaine at the shelter on October 9, 2015, her failure to appear for a scheduled drug test on October 28, 2015, and her apparent mental health concerns placed H.I. at risk of harm. The juvenile court ordered the Department to suitably place H.I., to have mother's mental health evaluated under Evidence Code section 730, and to provide mother with monitored visits and family reunification services.

This appeal followed.

DISCUSSION

Mother contends there was insufficient evidence to support the juvenile court's findings that her substance abuse placed H.I. at current risk of harm and that the Department had made reasonable efforts to prevent H.I.'s removal from her custody.

I. Applicable law and standard of review

We review the juvenile's court's jurisdictional findings under the substantial evidence standard. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) Under this standard, we review the record to determine whether there is any reasonable, credible, and solid evidence to support the juvenile court's conclusions, and we resolve all conflicts in the evidence and make all reasonable inferences from the evidence in support of the court's orders. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) We review the juvenile court's selection of a dispositional order for a minor under the substantial evidence standard. (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 145-146.)

Section 300, subdivision (b), provides that a child is within the dependency court's jurisdiction if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left."

Section 361, subdivision (c)(1), provides that a court may not remove a child from the parent or guardian with whom the child resides at the time the section 300 petition is filed unless the court finds one of several possible grounds, including that there “is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody.”

II. Substantial evidence supports the juvenile court’s findings and orders

Viewing the evidence in the light most favorable to the juvenile court’s jurisdictional findings, substantial evidence supports the findings that mother abused cocaine and that her substance abuse placed H.I. at substantial risk of physical harm.

Mother tested positive for cocaine on October 9, 2015. She had no plausible explanation for the presence of cocaine in her system, and she continued to breastfeed H.I. after she learned of the positive test result. After the section 300 petition was filed, mother failed to appear for a scheduled drug test on October 28, 2015. Although mother and the Department dispute whether they had agreed to reschedule the test so that mother could attend a job training session, any conflict in the evidence must be resolved in the Department’s favor. (*In re Savannah M.*, *supra*, 131 Cal.App.4th at p. 1393.) The juvenile court could properly consider mother’s missed drug test as a second positive test result. (See *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1217.) Substantial evidence supports the finding that mother abused cocaine.

A finding of substance abuse is *prima facie* evidence of a parent’s inability to provide regular care resulting in a substantial risk of harm to a child of “tender years” such that the absence of adequate supervision and care poses an inherent risk to the child. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 767.) Because H.I. was less than four months old at the time of the jurisdiction hearing, the finding of substance abuse is *prima facie* evidence of mother’s inability to provide regular care for her, resulting in a substantial risk of harm. (*Ibid.*)

Substantial evidence also supports the juvenile court's removal order. Mother moved from Florida to Los Angeles when H.I. was only two months old with no housing or source of support. She tested positive for cocaine, but denied any cocaine use, gave implausible and varying explanations for the cocaine exposure, and continued to breastfeed H.I. after learning of the positive drug test. There was also evidence that mother had mental health issues. She was diagnosed with an adjustment disorder, and she was confused and uncertain as to where she became pregnant with H.I. and the identity and whereabouts of H.I.'s biological father. During a monitored visit with H.I., mother was observed conversing with H.I. and with a photo of an older daughter who lived in Florida as if H.I. was an older child and K. was present in the room.

Mother's sole basis for arguing that the Department did not make reasonable efforts to prevent H.I.'s removal from her custody is the fact that she never received a court ordered mental health assessment. There was evidence, however, that the Department provided mother with referrals to mental health centers, but that mother visited the centers without advance notice to the Department, thereby precluding the Department's social worker from informing the assessors about case issues and the reasons for the assessment. There was also evidence that the Department provided mother with referrals to other programs, facilitated visits between mother and H.I., and made efforts to help mother obtain low income housing. Substantial evidence supports the finding that reasonable efforts were made to prevent H.I.'s removal from mother's custody.

DISPOSITION

The orders establishing dependency jurisdiction over H.I. and removing her from mother's custody are affirmed.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT